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The Effectiveness of International Legislative Responses to the Helms-Burton Act

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THE EFFECTIVENESS OF INTERNATIONAL LEGISLATIVE RESPONSES TO THE HELMS-BURTON ACT

BERNADETTE ATUAHENE*

I. INTRODUCTION

The Cuban Liberty and Democratic Solidarity (Libertad) Act (Helms-Burton Act)¹ is the latest appendage to the Cuban embargo.² Title III has caused an international uproar because it gives U.S. victims of Cuban expropriation a right of action within U.S. courts against third parties who traffic in confiscated property.³ For example, a U.S. citizen can sue a Canadian Mining company doing business in Cuba if they are operating on or using expropriated property. The Helms-Burton Act

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First, I would like to thank God. I dedicate this article to Ben Atuahene—my best friend, my inspiration, and my father. I would also like to send a special thanks to Beatrice, Nannette, Nana Efua, Raquel, Emelia, Abdeena, and Professor Reisman without your mentorship, love, and support this article would not be possible.

¹ See 22 U.S.C.A. §§ 6021-6091 (West 1996).

² After the demise of the Soviet Union and the termination of its subsidies to Cuba in 1991, Congress was certain that Cuba would rapidly wither under the stringent pressures of the free market system. The U.S. government asserted that “the economy of Cuba has experienced a decline of at least 60 percent in the last 5 years as a result of the end of its subsidization by the former Soviet Union of between 5 billion and 6 billion dollars annually”. 22 U.S.C.A. § 6021(1)(A) (West 1996). It passed the Cuban Democracy Act (CDA) in 1992 to expedite the fall of Castro’s regime. See Cuban Democracy Act, 22 U.S.C. § 6001 (1992). Domestically, CDA banned family remittances and forbade U.S. citizens from traveling to Cuba; and internationally the law forbade U.S. subsidiaries abroad from trading with the island. See Joanna R. Cameron, *The Cuban Democracy Act of 1992: The International Implications*, 20 FLETCHER F. WORLD AFF. 137 (1996). Canada, the European Union (EU), and England protested against the CDA because of its extraterritorial reach by passing blocking legislation. The controversy concerning the CDA was a mere glimpse of the international protest that was to erupt with the passage of the 1996 Helms-Burton Act.

³ See 22 U.S.C.A. § 6082 (West 1996).

(HBA) targets U.S. allies who continue to trade and invest in Cuba regardless of pending U.S. claims of expropriation. In response to the HBA, Cuba, Canada, Mexico, and the European Union (EU) created antidote legislation to protect their domestic interests against the allegedly illegitimate extension of U.S. jurisdiction. There is a vibrant debate concerning the HBA's legitimacy in which several scholars evaluate its consistency with international norms,⁴ and scrutinized its compatibility with multilateral trading rules established in NAFTA and the World Trade Organization (WTO).⁵ This note moves beyond this common analysis and uses antidote legislation to investigate the interesting relationship between the economic and political power of a country and its ability to curtail the domestic effects of the HBA.

Part II provides a brief background of the HBA and evaluates the virtues and vices of each of its four titles. Part III argues

⁴ See Antroy A. Arreola, *Who's Isolating Whom? Title III of the Helms-Burton Act and Compliance with International Law*, 20 HOUS. J. INT'L L. 353 (1998); Kathleen S. Adams, *Subchapter III of the Helms Burton Act: A Reasonable Assertion of United States Extraterritorial Jurisdiction?*, 21 HAMLINE L. REV. 147 (1997); Brice M. Clagett, *The Controversy over Title III of the Helms-Burton Act: Who Is Breaking International Law—The United States, or the States that Have Made Themselves Co-Conspirators with Cuba in its Unlawful Confiscations?*, 30 GEO. WASH. J. INT'L L. & ECON. 271 (1996-1997). [hereinafter *Breaking International Law*]; Joseph V. Walker, *The Legality of the Secondary Boycotts Contained in the Helms-Burton Act Under International Law*, 3 DEPAUL DIG. INT'L L. 1 (1997).

⁵ See John A. Spanogle, Jr., *Can Helms-Burton be Challenged under WTO?*, 27 STETSON L. REV. 1313 (1998); Klinton W. Alexander, *The Helms-Burton Act and the WTO Challenge: Making a Case for the United States Under the GATT National Security Exemption*, 11 FLA. J. INT'L L. 559 (1997). Harvey Oyer, *The Extraterritorial Effects of U.S. Unilateral Trade Sanctions and Their Impact on U.S. Obligations under NAFTA*, 11 FLA. J. INT'L L. 429 (1997); Dean Bucci, *The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996—Implication for NAFTA*, 26 GA. J. INT'L & COMP. L. 409 (1997); Stephen V. Iglesias, *The Legality of the Helms-Burton Act Under NAFTA: An Analysis of the Arguments the United States, Canada, and Mexico May Present to a Chapter 20 Dispute Resolution Panel*, 3 NAFTA L. & BUS. REV. AM. 116 (1997); Brian J. Welke, *GATT and NAFTA v. the Helms-Burton Act: Has the United States Violated Multilateral Agreements?* 4 TULSA J. COMP. & INT'L L. 361 (1997); Antonella Troia, *The Helms-Burton Controversy: An Examination of Arguments that the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 Violates U.S. Obligations under NAFTA*, 23 BROOK. J. INT'L L. 603 (1997); Christian Franken, *The Helms-Burton Act: Force or Folly of the World's Leader*, 7 MINN. J. GLOBAL TRADE 157 (1998).

that the United States is using Title III as a bargaining device to force U.S. allies to adjust their policy towards Cuba and to discourage foreign corporations from investing in the island. Given the United State's acutely unequal level of political and economic power in the world, the mere threat to enforce Title III has had severe implications for Cuba and its trading partners. Part IV presents the legislative offensive launched by Cuba, Canada, Mexico, and the EU to protect their domestic interests in the face of this Title III threat. More importantly, this section explores how power asymmetries limit the ability of foreign governments to block the application of U.S. law within its jurisdiction. Part V explores the utility and efficacy of using antidote legislation as a diplomatic tool.

II. ANALYSIS OF THE HELMS-BURTON ACT

The Cuban Liberty and Democratic Solidarity Act was the brainchild of Senators Jesse Helms (R-North Carolina) and Dan Burton (R-Indiana). While the 1992 Cuban Democracy Act attacks trade with Cuba, the 1996 HBA brings the embargo full circle by regulating investment.⁶ The HBA arose because a contingent in Congress, led by Senators Helms and Burton, imputed the blame for the Cuban Democracy Act's failure to the lack of international cooperation exhibited by foreign governments. The Senators claimed that foreign governments have been the saving grace for Castro's totalitarian government, infamous for its human rights abuses and political intolerance, by investing in properties illegally expropriated from U.S. citizens and corporations.⁷ Marc Thiesman, spokesman for the Senate Foreign Relations Committee, stated: "Canada and some of our European allies have effectively replaced the Soviet Union as the subsidizer of Castro's regime."⁸

Due to staunch concerns with its extraterritorial reach, President Bill Clinton initially refused to sign the Helms-Burton Act and thus it languished in the legislative labyrinth of Congress. The resurrection of the bill was, in large part, provoked by two factors. First, on February 24, 1996, the Cuban

⁶ See Cuban Democracy Act, 22 U.S.C. § 6001-6010 (1992).

⁷ See Howard Schneider, *Canada and Cuba: Booming Partners*, WASH. POST, Oct. 20, 1996, at A1.

⁸ *Id.*

government shot down a civilian plane flown by Brothers to the Rescue, a Florida-based group that assists Cubans to escape from the island. The second was the approaching 1996 election and President Clinton's desire to secure crucial electoral votes largely controlled by Cuban exiles in Florida. Consequently, the bill was signed and placed into action with one crucial caveat. The President was given the power to suspend enforcement of Title III in six-month intervals based upon the commitment of foreign governments to make Cuba's transition to democracy a foreseeable reality.⁹

The Helms Burton Act consists of four major sections designed to deal a swift blow to Castro's regime.¹⁰ Title I increases international economic sanctions against Cuba. This is unique because earlier legislative phases of the Cuban embargo have never dictated the policies of international financial institutions to the extent of the HBA.¹¹ It excludes Cuba from the International Monetary Fund (IMF), the International Bank for Reconstruction and Development, the International Development Association, amongst other powerful financial organizations responsible for providing heavily relied upon development capital to economically crippled nations.¹² Cuba's exclusion is solidified by a U.S. promise to breach its funding obligations to these international financial organizations if Cuba is given any type of economic support.

"If any international financial institution approves a loan or other assistance to the Cuban Government over the opposition of the United States, then the Secretary of the Treasury shall withhold from payment to such institution an amount equal to the amount of the loan or other assistance."¹³ The U.S. unilateral policy of isolation also includes preventing Cuba from ob-

⁹ See 22 U.S.C.A. § 6085(b)(1) (West 1996).

¹⁰ See 22 U.S.C.A. § 6022(2) (West 1996).

¹¹ See Foreign Assistance Act (1961), amendment to the Trading with the Enemy Act (1962), and subsequent amendments to the Export Administration Act.

¹² See 22 U.S.C.A. § 6034 (West 1996).

¹³ See 22 U.S.C.A. § 6034(b) (West 1996).

taining OAS membership,¹⁴ and encourages the withdrawal of Russian aid and personnel from the island.¹⁵

Title II is designed to prepare Cuba for a smooth transition to democracy.¹⁶ When Cuba institutes a government acceptable to U.S. standards, then and only then will the U.S. government allocate aid to the island and terminate economic sanctions.¹⁷ Title II delineates in excruciating detail exactly what type of Cuban government the United States will accept after the foreshadowed transition.¹⁸ For instance, the HBA requires the Cuban government to legalize all political activity, release all Cuban political prisoners, return U.S. political prisoners to U.S. authorities, dissolve their Department of State Security,¹⁹ transition to a representative democracy, hold free and fair elections, allow Radio Martí broadcasts,²⁰ establish an independent judiciary, respect human rights, establish independent trade unions, remove Fidel and Raul Castro, allow free speech and press, reinstate the citizenship of Cuban exiles, protect private property, and return or compensate the U.S. for all expropriated properties.²¹ In essence, the HBA is demanding that Cuba forgo its independence and sovereignty in order to adopt the legislative stipulations of a hostile nation.

The manner in which the HBA enumerates in such vivid detail how an independent nation should be internally organized

¹⁴ See 22 U.S.C.A. § 6035 (West 1996). A regional trade boycott of Cuba by all Latin American countries except Mexico began when Cuba was expelled from the OAS.

¹⁵ See 22 U.S.C.A. § 6036 (West 1996).

¹⁶ Stated purpose of the HBA:

[t]o assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democratic countries that are flourishing in the Western Hemisphere . . . to encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers . . . to provide a policy framework for United States support to the Cuban people in response to the formation of a transition government or a democratically elected government in Cuba.

²² U.S.C.A. § 6022 (West 1996).

¹⁷ 22 U.S.C.A. § 6064 (West 1996).

¹⁸ 22 U.S.C.A. § 6065 (West 1996).

¹⁹ The Department of State Security in the Cuban Ministry of the Interior, which includes the Committees for the Defense of the Revolution and the Rapid Response Brigade.

²⁰ Radio Martí is a Florida based radio station controlled by Cuban exiles.

²¹ 22 U.S.C.A. § 6065 (West 1996).

and operated, is very rare. As a matter of U.S. law, Cuba must conform to the aforementioned stipulations if it wants to bring closure to the United States effort to politically and economically marginalize the island. The Cuban government's official response was laden with incendiary rhetoric but not much more. According to Ricardo Alarcón de Quesada, President of the National Assembly of the People's Power,²² Title II is an affront to Cuba's sovereignty and part of a U.S. annexation plan.

Title II of the law . . . is the part outlining the annexationist plan. It offers a description of how they would organize the Republic of Cuba once, through intensified economic warfare; they had managed to destroy the Cuban Revolution—something that of course, they will never accomplish.²³

Although some Cubans recognize the need for fundamental changes within their society, they may view this as an internal matter not to be dictated by a hostile foreign government. In fact, the United States policy of isolation may serve to deflect attention away from the gross abuses of civil and political rights committed by the Castro regime²⁴ and instead unite Cubans around his dictatorship, which has been professedly fighting against the "imperialist enemy"²⁵ from the North. If the HBA shifts the focus away from Castro's abuses of power, then the U.S. is not effectively building a foundation for the anticipated democratic transition envisioned by Title II of the HBA.

²² The National Assembly of People's Power is the supreme body of state power and represents and expresses the sovereign will of all the people (art. 69), the only body in the Republic invested with constituent and legislative authority (art. 70), comprised of deputies elected by free, direct and secret vote, in the proportion and according to the procedure established by law (art. 71), and elected for a period of five years (art. 72). See CUBA CONST. Ch. X, arts. 69-72.

²³ See Republic of Cuba, National Assembly of Peoples' Power, Reaffirmation of Cuban Dignity and Sovereignty Act 17 (1996) (Presentation of the bill by Ricardo Alarcón de Quesada), translated at <<http://www3.cuba.cu/gobierno/antidoto.htm>> (visited, May 31, 2000). The Act is also translated in 36 I.L.M. 472 (1997) [hereinafter Reaffirmation of Cuban Dignity and Sovereignty Act].

²⁴ See Amnesty International Annual Report on Cuba 1999 (visited May 24, 2000) <<http://www.amnesty.org/ailib/aireport/ar99/amr25.htm>>. See also *infra* note 78.

²⁵ Reaffirmation of Cuban Dignity and Sovereignty Act, *supra* note 23.

While the Cuban government views Title II of the HBA as an egregious infringement of its sovereignty, other countries interpret Title III as an affront to their national sovereignty. The most contentious provision of Title III creates a cause of action for Americans against countries that are economically benefiting from property expropriated from U.S. citizens.²⁶ It states, any person who, "traffics in property, which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages."²⁷

The menacing aspect of Title III is its broad and over-encompassing definition of *trafficking in expropriated property*.²⁸ Essentially, if an individual or company assists the Cuban government through investment, distribution, sales, consulting, marketing, etc., then they are trafficking in expropriated property and thus subject to the jurisdiction of American courts. For illustrative purposes there is a family-owned confectionery in France that exports candy to the U.S. The candy is made with 5% Cuban sugar grown on a plantation previously expropriated from an American company, and 95% Haitian sugar. If the fair market value of the expropriated sugar plantation is 1.8 million dollars, then according to the HBA's language, this small business could be sued for the entire 1.8 million in addition to court costs, reasonable attorneys' fees, and treble damages despite the fact that only 5% of the candy's sugar came from the Cuban plantation.²⁹ The HBA renders businessmen in foreign countries liable for transactions deemed legal by their respective governments, regardless of the fact

²⁶ 22 U.S.C.A. § 6082 (West 1996).

²⁷ 22 U.S.C.A. § 6082(1)(A) (West 1996).

²⁸ The term 'property' is identified as "any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest". 22 U.S.C.A. § 6023(12)(A) (West 1996). Traffics definition is "sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes, of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property." 22 U.S.C.A. § 6023 (13)(A)(i) (West 1996).

²⁹ "[T]he fair market value of that property, calculated as being either the current value of the property, or the value of the property when confiscated plus interest, whichever is greater; and court costs and reasonable attorneys' fees." 22 U.S.C.A. § 6082 (1)(a) (West 1996).

that they were not responsible for the property's original expropriation, and regardless of their limited use. Although Title III has not been enacted,³⁰ under the authority of Title IV, the State Department denies visas to individuals, corporate officers, agents or principals (and their spouses and minor children) who have confiscated or converted U.S. property.³¹

Most western nations want increased respect for human rights and to promote a democratic transition in Cuba, but the means to achieve this shared end are different. Nations operating under the liberal tradition have opted for a strategy of economic engagement where incremental increases in aid and trade are contingent upon Cuba's progress.³² In contrast, the United States stands alone in its policy of isolation and unilateral economic sanctions against the island;³³ and scholars have argued that these sanctions are politically and economically ineffective.³⁴ One factor that this debate clarifies is that there

³⁰ See *infra* Section III (The HBA as a Bargaining Device).

³¹ The Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who the Secretary of State determines is a person who, after March 12, 1996, 1) has confiscated, or has directed or overseen the confiscation of, property a claim to which is owned by a United States national, or converts or has converted for personal gain confiscated property, a claim to which is owned by a United States national; 2) traffics in confiscated property, a claim to which is owned by a United States national; 3) is a corporate officer, principal, or shareholder with a controlling interest of an entity which has been involved in the confiscation of property or trafficking in the confiscation of property or trafficking in confiscated property, a claim to which is owned by a United States national; or 4) is a spouse, minor child, or agent of a person excludable under paragraph (1),(2) or (3). See 22 U.S.C.A. § 6091(a) (West 1996).

³² See David P. Fidler, *Libertad v. Liberalism: An Analysis of the Helms-Burton Act from Within Liberal International Relations Theory*, 4 IND. J. GLOBAL LEGAL STUD. 297 (1997).

³³ For 7 years the U.N. General Assembly has overwhelmingly approved resolutions urging the United States to end its 34-year embargo against Castro's regime. The vote in 1996, 138-3 with 25 abstentions, called upon the United States to repeal Helms-Burton and to end the embargo. Only Israel and Uzbekistan joined the United States in voting against the resolution. See 1998 United Nations General Assembly: Resolution on the necessity of ending the economic, commercial, and financial embargo imposed by the United States of America against Cuba, U.N. doc. A/RES/52/10, Nov. 5 (1997).

³⁴ See Gary Clyde et al., *U.S. Economic Sanctions: Their Impact on Trade, Jobs, and Wages*, Institute for International Economics (1997) (visited May 24, 2000) <http://207.238.152.36/catalog/WP/1997/SANCTION/sanctnwp.htm> "Most of the analysis of the effectiveness of economic sanctions suggests they

is no one correct strategy for bringing about the necessary changes in Cuba. However, through the HBA the United States is forcibly discouraging other countries from pursuing a policy of engagement by placing restrictive parameters on investments and trade with Cuba. Herein lies the crux of the HBA dilemma.

Title III forces foreign governments to abide by unpopular U.S. policy at the risk of being exposed to economic liability imposed by U.S. courts. In the United States legislature, this was viewed as a necessary evil because Congress felt as though its foreign counterparts were not adequately abiding by their commitment to promote change in Cuba.³⁵ However, it is unclear whether the HBA represents a growing tide of U.S. displeasure with its allies who traffic in expropriated properties or if it reflects how Cuban exiles in Florida successfully manipulated a moment of national anger evoked by the plane shooting in the Brothers to the Rescue incident. In the face of an anticipated international uproar over the provisions of Title III, and to a lesser extent Title IV, why did the President sign the HBA?

III. HBA AS A BARGAINING DEVICE

The Helms-Burton Act's main political function is to serve as a bargaining device. As stated earlier, the bill's first attempt to pass through Congress was unsuccessful. When the Cuban government shot down the civilian plane, a myriad of external pressures forced Clinton to take action and the HBA was once again brought before him.³⁶ Against the advice of his former

have limited utility for changing the behavior or governments of target countries." Natalie Maniaci, *The Helms-Burton Act: Is the U.S. Shooting Itself in the Foot?*, 35 SAN DIEGO L. REV. 897 (1998). "The sanctions against Cuba illustrate the ineffectiveness and cost, both politically and economically, of unilateral economic sanctions." Alan Einisman, *Ineffectiveness at its Best: Fighting Terrorism with Economic Sanctions*, 9 MINN. J. GLOBAL TRADE 299 (2000) (documenting the general ineffectiveness of economic sanctions).

³⁵ E.g. Senator Jesse Helms, co-author of the HBA, stated, "A lot of Canadian companies put their morals on the shelf and are jumping at the opportunity . . . Every dollar they ship is a dollar that prolongs the suffering of the Cuban people." See Shneider, *supra* note 7.

³⁶ See Remarks by the President at signing of the Helms-Burton Bill (visited Apr. 16, 2000) <<http://www.pub.whitehouse.gov/urires/12R?urn:pdi://oma.eop.gov.us/1996/3/12/3.text.1>>:

Secretary of State Warren Christopher, the President signed the HBA but only with the inclusion of section 306 which empowers the president to suspend implementation of Title III in six-month intervals if it is in the national interest and expedites Cuba's transition to democracy.³⁷

The HBA forces foreign governments to either stop supporting Castro's regime by investing in "expropriated properties" or face costly lawsuits in U.S. courts. With the looming threat of expensive American lawsuits at his disposal, Clinton is in an ideal bargaining position to affect the policy decisions of foreign governments. On the one hand, Clinton can indefinitely suspend enforcement of Title III as long as foreign entities abide by their obligation to refrain from unduly supporting Castro's regime.³⁸ On the other hand, possible costly American lawsuits deter foreign governments from shirking their obligations. The creators of the HBA were well aware of its inherent value as a bargaining tool. When Clinton announced an indefinite suspension of the HBA in order to quell the international uproar, Helms said Clinton had given up the best leverage he had to pressure Canada and Mexico by announcing his intention to suspend the provision indefinitely.

Two and a half weeks ago, the world received a harsh reminder of why a democratic Cuba is so important, not only to us but to the people of Cuba. In broad daylight and without justification, Cuban military jets shot down two unarmed United States civilian aircraft causing the deaths of three American citizens and one U.S. resident. The planes were unarmed, the pilots unwarned. They posed no threat to Cuba's security.

This was clearly a brutal and cruel act. It demanded a firm, immediate response. On my instructions, Ambassador Albright convened the United Nations Security Council which unanimously deplored Cuba's actions. Dozens of countries around the world expressed their revulsion. Cuba's blatant disregard for international law is not just an issue between Havana and Washington but between Havana and the world.

I ordered, also, a number of unilateral actions. One of those steps was to have my representatives work closely with Congress to reach prompt agreement on the Cuban Liberty and Democracy Solidarity Act.

³⁷ See 22 U.S.C.A. § 6085(1) (West 1996). See also *Fact Sheet on President's Decision*, The White House: Office of the Press Secretary (Jul. 16, 1996) (visited Apr. 16, 2000) <<http://www.pub.whitehouse.gov/urires/I2R?urn:pdi://-oma.eop.gov.us/1996/7/16/2.-text.1>>.

³⁸ Clinton most recently suspended Title III on January 15, 2000 and has suspended Title III every 6 months since its enactment in 1996. (Jan. 3, 1997, Jul. 16, 1996). See *Whitehouse Electronic Publications* (visited Apr. 16, 2000) <<http://www.pub.whitehouse.gov/retrieve-documents.html>>.

Several corporations translated the United States' threat to be more than a mere bluff; consequently, the HBA has played a significant role in stifling Cuba's economic growth and has twisted the Castro regime to the brink of financial ruin.³⁹ When compiling a cost benefit analysis and assessing the potential profits of doing business in Cuba, future investors must consider the HBA and its potential to mitigate profits by producing extraneous administrative burdens, subjecting the company to costly litigation, or affecting crucial trade relations with the U.S. For a significant number of foreign corporations, the ultimate costs of investing in Cuba outweighed the benefits. For instance, Dutch bank ING and Spanish firm Banco Bilbao Vizcaya withdrew financing packages totaling nearly 60 million dollars a year.⁴⁰ Cementos Mexicanos, a Mexican company with U.S. subsidiaries, used to market and provide technical assistance to a Cuban cement plant but withdrew.⁴¹ The factory was expropriated from Lone Star, a U.S. corporation, and thus subject to HBA sanctions.⁴² Redpath, a Toronto based subsidiary of Tate & Lyle, decided to forgo 100,000 pounds of Cuban sugar in favor of a less problematic supplier.⁴³ The company faced increased administrative cost in its effort to keep Cuban sugar separate from its other inventory destined for the United States.⁴⁴ In addition, Paradores Nacionales de Turismo reneged on plans to construct eight hotels on the island and some speculate that the decision was motivated by the HBA.⁴⁵ Stuart Eizenstat, the president's special envoy for the promotion of democracy in Cuba stated that thirteen (13) firms have either "scrapped planned investments or disinvested in confiscated property because of the law."⁴⁶ From the U.S. vantage point it seems as if the threat of Title III has been successful in reduc-

³⁹ The termination of USSR subsidies to Cuba also played a substantial role in the Cuba's economic crisis.

⁴⁰ See David M. Shamberger, *A Legal and Effective Vehicle for Redressing U.S. Property Claims in Cuba and Accelerating the Demise of the Castro Regime*, 21 B.C. INT'L & COMP. L. REV. 497, 504 (1998).

⁴¹ *Id.*

⁴² See *Cuba: Canadian Company Penalized Under Helms-Burton*, CARIBBEAN UPDATE, Aug. 1, 1996, available at 1996 WL 8154457.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See Shamberger, *supra* note 40, at 504.

ing investment in Cuba. However, statistics from the Cuban ministry of foreign relations suggests that the HBA has not significantly discouraged foreign investment.

The Cuban report states that, "by the end of 1999, 374 joint ventures between Cuba and 46 countries existed . . . in some 30 economic sectors."⁴⁷ More significantly, 57% of Cuba's joint ventures were created after the HBA was enacted in 1996.⁴⁸ From 1998 to 1999 revenues from these joint ventures increased 26% in the area of sales and 25% in goods and services.⁴⁹ Given the conflicting reports, it is difficult to decipher the HBA's exact impact on foreign investment in Cuba. At the very least we can be sure that the HBA has successfully exerted pressure on foreign corporations to research the properties involved in its joint ventures to ensure that they were not expropriated from American citizens or corporations. For instance, a Canadian company, Holmer Gold Mines Ltd., has entered into a joint venture with Cuba's GeoMinera S.A. to develop the Loma Hierro silver deposit.⁵⁰ The company has reported that it "has received comprehensive legal opinions that neither of these properties is subject to the U.S. Helms-Burton Act."⁵¹ Similarly, a Franco-Spanish tobacco group, Altadis, purchased a 50% interest in the famous Cuban cigar producer Habanos for 500 million dollars.⁵² The Spanish newspaper, *El País*, reported that, "Altadis believes this deal will not infringe the oppressive US Helms-Burton regulations."⁵³ There are corporations that have not been as cautious as Altadis and Holmer, and hence are subject to HBA sanctions.

The U.S. Department of State has considered sanctioning four corporations under Title IV for being in violation of the HBA. First, the Sherritt International Corporation, which is primarily a Canadian nickel mining operation, was sanctioned for operating a site previously owned by a New Orleans com-

⁴⁷ See Agence France-Presse, *Half of Cuba's Foreign Investment Comes from Europe: Report*, Feb. 15, 2000, available at 2000 WL 2733965.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See *This Month in Mining*, *ENGINEERING & MINING J.*, Jan. 30, 2000, available at 2000 WL 14062584.

⁵¹ *Id.*

⁵² See *Havana Smoking Spanish*, *EL PAÍS*, Mar. 5, 2000, available at 2000 WL 2541044.

⁵³ *Id.*

pany, Freeport-Mack Moran.⁵⁴ In response to Title IV sanctions, the Sherritt Vice-President, Patrice Merrin-Best, issued a statement affirming, "we do business legally in Canada, legally in Cuba, legally in every jurisdiction where we operate. We do not operate in the U.S. we are staying the course [in Cuba]."⁵⁵ Second, there are other countries staying the course in Cuba such as Spain's Meliá hotel group.⁵⁶ The corporation has twelve (12) hotels in Cuba and hopes to have twenty-five (25) by 2005.⁵⁷ On March 9, 1999 Rodrigo Rato, Spanish deputy prime minister and economy minister, warned that European Union would bring a case before the WTO if Sol Meliá was sanctioned under Title IV.⁵⁸ However, this has yet to materialize.⁵⁹ Third, Grupo Domos, a Mexican telecommunications corporation, faced possible sanctions for using systems formerly owned by the American Company ITT Corporation. Grupo Domos terminated the deal upon receiving a State Department warning letter⁶⁰ and all equity interest was transferred to its Italian partner Societa Finanziaria Telefonica per Axioni (STET).⁶¹ STET obviated HBA sanctions by brokering a private settlement directly with ITT. Fourth, after being issued an advisory letter on December 30, 1997, the principle executives of the BM group and their families were sanctioned under Title IV.⁶² The BM group is an Israeli firm with investments in Cuban citrus and sugar. Although the HBA has not intimidated every foreign firm into abandoning their investments in Cuba, it has been most successful in cajoling corporations with substantial assets in the U.S.; and forcing businesses to investigate and respect U.S. claims to expropriated properties. The HBA has served as an effective bargaining tool for achieving U.S.

⁵⁴ See Shamberger, *supra* note 40, at 504.

⁵⁵ *Id.*

⁵⁶ See *US on Sol Meliá's case Once More*, EXPANSION, Aug. 12, 1999, available at 1999 WL 20700210.

⁵⁷ *Id.*

⁵⁸ See *Rato to Seek Reprisals Against US if it Punishes Sol Meliá*, EL MUNDO, Sept. 3, 1999, available at 1999 WL 10458766.

⁵⁹ See *infra* Section IV-F on the WTO.

⁶⁰ See *Mexican Firm Loses Cuba Business*, 7 NORTH. AM. FREE TRADE & INVESTMENT REP. 4, Feb. 28, 1997, available at 1997 WL 9049764.

⁶¹ *Id.*

⁶² See Greg Cone, *Sherritt Power Sparks Life into Cuba*, THE FIN. POST, Mar. 25, 1998, at 21.

policy objectives in Cuba and has indubitably dealt another swift blow to Cuba's already volatile economy.

The U.S. holds a unique position of power in the current world order, where a mere threat of sanctions can have such an extensive effect. Although at times the U.S. can legitimately leverage its trade power to implement its foreign policy objectives, this power must be tempered.⁶³ With the HBA, several foreign governments and merchants believe that the United States overstepped its bounds by disregarding international law. Cuba claims that U.S. policy has run afoul of international norms for decades. Relegated to a virtually powerless position, Cuba is forced to bear the tides of economic and political isolation unleashed by the U.S. Allies of the United States now feel as though their sovereignty is being threatened as a result of the HBA and U.S. policy toward Cuba. However, U.S. trading partners potentially have the power to put a stop to the threat. There have been significant international legislative and diplomatic responses to the HBA by Cuba, Canada, the European Union, Mexico, the United Nations General Assembly, the Inter-American Juridical Committee, and a host of other governments and international entities. In essence, they have taken a stand against U.S. hegemony. In light of the international backlash to the Helms-Burton Act, the United States may be getting more than it originally bargained for.

IV. INTERNATIONAL RESPONSES

A. Cuba

What Americans refer to as the economic embargo against Cuba, the Cuban government refers to as a war against its independence, its people, and its revolution. The 1996 Helms-Burton Act is viewed as just another offensive maneuver in this war.⁶⁴ According to a top Cuban government official, "[t]he U.S. blockade which is more than a blockade is a vicious economic, commercial and financial war."⁶⁵ Theoretically, an embargo is

⁶³ For example, economic sanctions in South Africa were successful because of multilateral agreement and coordination.

⁶⁴ See Reaffirmation of Cuban Dignity and Sovereignty Act *supra* note 23.

⁶⁵ See *A New stage in the War Against Cuba* (aired on Cuban television and broadcast on international radio Havana Cuba and Radio Rebelde and Radio

meant to change the minds of the ruling elite by placing their country in an economically and politically precarious position. While the effectiveness of the embargo on Castro's regime is debatable, it unquestionably has had a deleterious effect on the Cuban people. In the eyes of some Cubans, their hardships may be a direct consequence of the economic war waged by the United States government and perhaps as a result, less culpability is attributed to Castro's economic policies.

U.S. long-term objectives for Cuba have always been for the island to transition to democracy, free trade, and a market economy. Since President Eisenhower initiated sanctions in 1960, until now, this objective has gone unfulfilled. Although the island was forced to liberalize its foreign investment strategies after the fall of the former Soviet Union in 1991, Cuba remains centralized politically and economically. The HBA was designed to be "the straw that broke the camel's back," so to speak, and to destroy Castro's resilient regime in order to bring U.S. objectives to fruition.

In response to the HBA, the Cuban government passed the Reaffirmation of Cuban Dignity and Sovereignty Act (Law Number 80) on December 24, 1996.⁶⁶ In the final presentation of the law, the President of the National Assembly, Ricardo Alarcón, gave Cuba's official reaction to the HBA:

[The HBA] attempts to deny Cuba's existence as a sovereign state, to eliminate the Cuban nation, impose colonial servitude and enslave our people; it seeks to intensify and universalize the blockade by sanctions and illegal threats against third parties, to force them to accept Yankee policy. Its purpose is to economically strangle Cuba, and increase our people's difficulties; it makes immoral use of food and medicines as weapons of war; attempts to turn suffering, hardship and sickness into instruments of a policy which cynically manipulates the concept of freedom, that prostitutes the idea of liberty and whose real objective is to lead an entire nation to martyrdom.⁶⁷

Progreso national radio stations). Presentation by Dr. Ricardo Alarcón de Quesada, president of the National Assembly of People's Power of Cuba on the United States government policy against Cuba.

⁶⁶ Reaffirmation of Cuban Dignity and Sovereignty Act *supra* note 23.

⁶⁷ *Id.*

The official reaction is infused with glaring overstatements and propaganda such as the allegation that the U.S. is trying to impose colonial servitude, enslave Cubans, and lead Cuba to martyrdom.⁶⁸ Given the vast disparity of power between the United States and Cuba, the effect of any Cuban legislative reaction will not be felt beyond its borders. While the HBA has caused an international uproar, a modicum of international governments or policy makers maybe aware of Law Number 80's existence. This note analyzes the Cuban law's major provisions and consequences because it provides a window into the virtues and vices of antidote legislation at large. Law Number 80 is also a superb example of the intersection between asymmetrical power relations and antidote legislation.⁶⁹

Law Number 80 contains three primary sections designed to prevent national and foreign compliance with the HBA. The Cuban law seeks to (i) sanction U.S. citizens and corporations, (ii) institute protective measures for foreign investors, and (iii) punish Cuban citizens who comply with the HBA.⁷⁰ First, Law Number 80 excludes U.S. citizens who comply with HBA from

⁶⁸ *Id.*

⁶⁹ The Cuban and U.S. description of the incidents leading to the implementation of the HBA are completely at odds. Whatever the truth may be, this controversy was the impetus behind the legislative will which enacted the HBA and in turn Cuba's retaliation law. Section 6046 of the HBA—*Condemnation of Cuban Attack on American Aircraft*—thoroughly explains the U.S. position. The planes were flying along the Florida straits engaging in their usual mission when Cuban fighter jets opened fire although the planes presented no imminent threat. "The response chosen by Fidel Castro, the use of lethal force, was completely inappropriate to the situation presented to the Cuban Government, making such actions a blatant and barbaric violation of international law and tantamount to cold-blooded murder." 22 U.S.C.A. § 6046 (West 1996).

This is contrary to the Cuban version of the incident as detailed in Law Number 50. Law Number 50 states that the HBA was an excuse to increase sanctions, not a punishment for the plane attack. The Cuban government views Brothers to the Rescue as part of the Cuban exile contingent in Florida determined to bring an end to Castro and the Cuban revolution. The Cuban government believed the mission was a threat to its national security because the organization was infamous for engaging in "sabotage, military provocations, introducing elements and biological substances, and introducing into [the] country bacteria to affect [its] crops." See *Reaffirmation of Cuban Dignity and Sovereignty Act supra* note 23.

⁷⁰ Cuba's Law Number 80 is almost entirely symbolic because it has no capacity for enforcement, consequently, this note analyzes the law accordingly.

receiving future compensation.⁷¹ It asserts that just compensation will not be paid to American citizens who bring an action under Title III. Cuban citizens who, through naturalization, became American citizens are also excluded under Law Number 80. Any future calculations of just compensation must take into account the human suffering and economic deterioration caused by the U.S. blockade and other U.S. sponsored aggressions.⁷² It is quite clear that the U.S. is not inclined to accept Cuba's unrealistic offer of compensation as delineated in Law Number 80, nor is Cuba willing to accept the unequal terms established by the Helms Burton Act. This forty-eight (48) year-old-deadlock has become further ossified through the passage of the HBA and Cuba's antidote law.

However, the true power of Law Number 80 is symbolic and not found in its enforcement. Cuba is attempting to assert its autonomy as a sovereign nation. The law was created to prove to the Cuban people that their government will stand its ground regardless of how daunting and powerful its enemy.⁷³ More figuratively, the inherent worth of the law is derived from the proverbial image of David, courageously standing in the face of his ominous enemy the all-powerful Goliath. However, David won the battle not by direct confrontation but by employing a creative maneuver—his slingshot. Article 5 of Cuba's law is this creative maneuver.

The second strategy is found in article 5, and requires the Cuban government to adopt provisions to protect the interests of its trading partners. For example, the government must apply and authorize the formulas necessary to subvert the HBA through the transfer of "foreign investors' interests to fiduciary companies, financial units or investment funds."⁷⁴ Second, the Cuban government ensures investors that it will provide all the necessary legal and financial documentation to defend them

⁷¹ Reaffirmation of Cuban Dignity and Sovereignty Act, art. 4 *supra* note 23.

⁷² See *id.* art. 3.

⁷³ In the context of Cuba's totalitarian government, everything enumerated within Law Number 80 could have been enacted without the actual law. So why did they create the antidote legislation in the first place? Since Cuba is in a position of powerlessness in relation to the United States, the power of its antidote legislation is limited to that of a political propaganda.

⁷⁴ Reaffirmation of Cuban Dignity and Sovereignty Act, art. 6 *supra* note 23.

against potentially devastating provisions of the HBA.⁷⁵ For instance, if a Canadian company is sued in U.S. courts, Law Number 50 requires Cuba to provide documentation that verifies expropriated properties were not used or any other documents favorable to Canada's defense.

Third, article 13 encourages the formation of a united front between Cuba and Canada, Mexico, the EU, and other international entities attempting to combat the extraterritorial reach of the HBA.⁷⁶ If Cuba is going to survive the latest onslaught in the U.S. economic embargo, this type of coordination between countries is crucial. Cuba is a small island with extremely influential investment and trading partners. Cuba must leverage the power of its business partners in any curative law passed to mitigate the effect of the HBA. One fact is clear. Due to existing power dynamics, Cuba cannot eschew or ignore the HBA but must instead work around it. Multilateral reactions to the HBA are ultimately more effective; and in the case of Cuba unilateral antidote legislation is fruitless.

The third strategy of Law Number 80 is to punish Cuban nationals who participate in the enforcement of the HBA. The law for the Protection of Cuba's National Independence and Economy (hereinafter Protection Law) is the supporting legislation enacted to do this. The Protection Law states:

Cuban citizens who directly or indirectly provide the U.S. with information to help the U.S. apply Helms-Burton law and subvert the Cuban regime will be sentenced to 7-15 years of imprisonment; the new law also bans the introduction of subversive materials into the country, along with the importation of equipment designed to disseminate such information. Any Cuban citizens who keep cooperative ties with media organizations which help the U.S. apply the Helms-Burton law and

⁷⁵ *Id.* art. 7.

⁷⁶ "The National Assembly of People's Power and the Government of the Republic of Cuba shall cooperate and work in coordination with other parliaments, governments and international agencies, with the aim of promoting any actions deemed necessary to block the application of the Helms-Burton Act." Reaffirmation of Cuban Dignity and Sovereignty Act, Art.13 *supra* note 23.

other subversive acts will be sentenced to 2-5 years of imprisonment.⁷⁷

The nebulous Protection Law has the incredible potential for unregulated application and undue restrictions on civil and political freedoms. An individual can be convicted of anything from speaking out against the government's expropriation policies to distributing information that expresses dissatisfaction with the political system. Cuba's response to U.S. economic aggression has been to further repress its citizen's civil and political rights under the guise of national security.⁷⁸ While political dissidents or free access to information may threaten the Cuban political order, Castro's regime cannot abridge the fundamental rights of its people in order to protect itself. Castro's government is trying to block enforcement of the HBA domestically by abusing its totalitarian power. Domestically, Cuba is replicating the very same abuses of power it sought to remedy with the HBA. Herein lies the dilemma of antidote legislation at large, it reproduces the very same vices that it originally sought to ameliorate.

In general, the Reaffirmation of Cuban Dignity and Sovereignty Act or Law Number 80 is an attempt by the Cuban government to protect itself and its investment partners from the effects of the HBA. Its effectiveness is another question. Cuba's political and economic powerlessness has relegated the Cuban legislation to a position of international insignificance. As stated earlier, the law has great symbolic value, but no bite. This is because during all phases of the embargo Cuba has been in a reactionary position in which it has been forced to act within the agenda set by the United States. Within this context, any antidote legislation does not have the extraterritorial power necessary to counter extraterritorial legislation such as the HBA.

⁷⁷ See *Law Passed to Crack Down on Dissidents*, CARIBBEAN UPDATE, Apr. 1, 1999, available at 1999 WL 8518889.

⁷⁸ Amnesty International's 1999 annual report noted that, "many political dissidents were detained for short periods or harassed. There were frequent reports of ill-treatment. Prison conditions sometimes constituted cruel, inhuman or degrading treatment. At least 10 unarmed civilians were shot dead by law enforcement officials who used lethal force unjustifiably. There were at least five executions. New death sentences were passed and several men remained under sentence of death at the end of the year." *Supra* note 24.

In theory, with the correct incentives, antidote legislation should have the power to prevent domestic compliance with the HBA. In the case of Cuba, Law Number 80 has the potential to not only prevent compliance but to also further repress the Civil and Political Rights of Cuban citizens. What are Cuba's options? Recently, the Cuban government has focused the national spotlight on the effects of the U.S. embargo on Cuban citizens. Through a campaign known as La Demanda, the Cuban government is suing the United States for 121 billion dollars through its provincial court in Havana.⁷⁹ On February 28 of this year experts from the government's import enterprise testified that the U.S. is responsible for shortages in food, milk and other foodstuffs.⁸⁰ The Assistant Trade Director claimed Cuba had to spend 18 million dollars more on purchasing wheat, 2.5 million dollars more for powdered milk, and 1.7 million dollars more for chicken last year because they could not buy it from U.S. markets.⁸¹

A more effective solution than employing antidote legislation or suing the U.S. in Cuban courts is to take multilateral action. For instance, the UN has undertaken a resolution condemning the U.S. embargo on Cuba for the past 7 years.⁸² This annual protest reflects worldwide opposition and reproach for the United State's policy towards Cuba, is a source of diplomatic embarrassment for the United States, and gives Cuba's anti-embargo policies and campaigns an incontrovertible legitimacy. Another strategy that Cuba may employ is to directly appeal to America's business community. The United State's hard line policy of economic isolation has been indisputably shaped, supported and ossified by anti-Castro Cuban exiles residing in Miami. The losers of this policy are both Cubans living on the island and American business people who have been denied access to Cuban markets. While strategies such as La Demanda appeal to Cubans on the island, the Cuban government must also make direct appeals to "the other losers" of the economic embargo—the American business community. Recently, the

⁷⁹ See Dalia Acosta, *Politics-Cuba: People, not Castro, Victims of U.S. Embargo*, INTER PRESS SERVICE, Mar. 1, 2000, available at 2000 WL 4090072.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² 1998 United Nations General Assembly: Resolution on the necessity of ending the economic, commercial, and financial embargo imposed by the United States of America against Cuba. See *supra* note 33.

Senate Foreign Relations Committee voted to ease sanctions against Castro's government by allowing food and medicines sales to Cuba.⁸³ This was not the result of some wave of beneficence that suddenly struck Jesse Helms upside his head; instead the legislation was a result of the influential American farm lobby and powerful pharmaceutical companies who have lost billions in potential sales over the years. Cuba must make a more concerted effort to form strategic alliances with this population. The U.S.-Cuba Business Summit being held on June 7 is a step in the right direction, but more must be done.⁸⁴ The only way Cuba can challenge a unilateral offensive by the United States is through multilateral efforts such as the ones just mentioned, ineffective antidote legislation is not a viable alternative. Through this tumultuous exchange of legislative antagonism, one fact is clear; U.S.-Cuba relations remain at a standstill, diplomatic remedies continue to be implausible, and the Cuban and American people still deprived of the opportunity to engage in a vibrant cultural exchange.

B. Canada

Canada adamantly opposes the U.S. embargo in Cuba. Canada, like the United States, wants to evoke a transition to democracy in Cuba but has chosen a strategy of economic engagement as a means to accomplish this end. It is also Cuba's largest trading and investment partner, and therefore one of the HBA's central targets.⁸⁵ However, if the long awaited democratic transition in Cuba ever occurs as anticipated in the HBA, it will be Canadians and not Americans positioned to capitalize on the resulting business opportunities. Canadians are benefiting from the absence of American competition, which would have otherwise resulted given the investment opportunities now becoming more abundant with the liberalization of Cuba's foreign investment laws. As a result of the economic embargo, American businessmen are being excluded from profitable ventures while Canadian businessmen are developing strong relationships with the Cuban government and gradually

⁸³ S.B. 926, 106th Cong. (1999).

⁸⁴ See US-Cuba/Business, *U.S. Businessmen will meet with Cuban Officials in the Island*, EFE NEWS SERVICE, Mar. 22, 2000.

⁸⁵ See Schneider, *supra* note 7.

integrating themselves into the country's economic infrastructure.

For example, Canadian companies have invested over 500 million dollars in Cuba.⁸⁶ More than forty (40) Canadian mining companies have two-hundred thirty (230) joint ventures with the island.⁸⁷ "Vancouver-based mining firm Northern Orion Exploration Ltd. is poised to become the first major producer of gold in Cuba and will be spending U.S.60 million dollars this summer to produce more than 80,000 ounces of gold and 440 million pounds of copper."⁸⁸ A new company, Vancuba Holding SA, will build eleven new hotels worth 200 million Canadian dollars Vancuba was created to facilitate a ten-year partnership with Cuba's state owned hotel firm, Gran Caribe.⁸⁹ In addition to these investment deals, Canada exports food, machinery and parts to Cuba while importing nickel sugar and fish.⁹⁰ The extent and volume of Canada's involvement mitigates the effects of the Cuban embargo, and therefore the HBA seeks to regulate it's investment in the island.

In retaliation to the HBA, the Canadian government passed an amendment to its Foreign Extraterritorial Measures Act (FEMA), a law originally addressing foreign antitrust litigation.⁹¹ Section 7.1 states "any judgement given under the law of the United States entitled Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 shall not be recognized or enforceable in any manner in Canada."⁹² Canada does believe that it is Cuba's duty to compensate Americans for expropriated properties, however, it also believes that this should remain a U.S.-Cuba issue and not have become a U.S.-Canada issue.

⁸⁶ See Douglas Farah, *Cuba Signs Broad Pact with Canada; Ottawa's Envoy Blasts U.S. Law, Offers Cooperation on Rights*, WASH. POST, Jan. 23, 1997, at A1.

⁸⁷ See *Canadian Companies Take Steps to Minimize Impact of Helms-Burton*, 6 N. AMERICAN FREE TRADE & INVESTMENT REP. 14, July 31, 1996.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ See Deborah Ramirez, *In Canada, U.S. Finds Friendly foe Neighbors Ignoring Helms-Burton Law*, SUN-SENTINEL FT. LAUDERDALE, Nov. 29, 1996, at 1A.

⁹¹ See Michael Fitz-James, *Keeping Out U.S. Antitrust Lawyers*, THE FIN. POST, May 5, 1998, at 13.

⁹² Specific references to the HBA means that Canada must amend this legislation if the U.S. creates a different law with an objectionable extraterritorial reach. See Foreign Extraterritorial Measures Act [FEMA], (1996) (Can.).

Canada's International Trade Minister summarized his country's position by stating,

[t]here is no dispute over the fact that companies should be compensated for any property that is expropriated from them, regardless of whether the government doing the expropriating is totalitarian or democratic . . . but they shouldn't be coming after third countries to get that compensation . . . the United States aims at its foes and shoots at its friends.⁹³

FEMA is designed to protect Canadian citizens and residents, corporations incorporated in Canada, and any person doing business in Canada from the HBA's misdirected line of fire.

Through FEMA, Canada directly confronts the extraterritorial reach of the HBA and tries to undermine its very intent with a two prong strategy. FEMA creates a right of action in Canadian courts for individuals and corporations being sued under the HBA, and punishes Canadian corporations or individuals for complying with the HBA. First, at any time before a judgement is reached in U.S. courts, the accused can bring a counter-suit in Canadian courts.⁹⁴ If damages have already been rewarded in U.S. courts, damages plus any additional losses are recoverable in Canada.⁹⁵ In order to secure Canadian judgements, FEMA allows seizures of American property.⁹⁶ In sum, FEMA weaves a complicated and cumbersome web in an effort to protect Canadian interests. The Canadian government is fully aware of these complications and, according to Christine Stewart, Canada's Secretary of State for Latin America and Africa, "the government remains hopeful that it will not have to use the strengthened FEMA against actions in the

⁹³ See *Sanctions: Canada Plans Legislation to Counter Helms-Burton Law*, 13 INTL. TRADE REP. AMERICAS/NAFTA 25, Jun. 19, 1996.

⁹⁴ See FEMA, ch. F-29 § 1(1).

⁹⁵ See FEMA, ch. F-29 § 9(1a).

⁹⁶ See FEMA, ch. F-29 § 2.

In addition to any other means of enforcing judgment available to the court, order the seizure and sale of any property in which the person against whom the judgment is rendered, or any person who controls or is a beneficial interest. The property that may be seized and sold includes shares of any corporation incorporated by or under a law of Canada or a province, regardless of whether the share certificates are located inside or our side Canada.

United States under Helms-Burton." To date, Canada has not yet challenged the HBA under FEMA.⁹⁷

For illustrative purposes, if Title III comes into effect then Freeport-MacMoran (U.S. company) can bring a suit against the Sherritt International (Canadian company) for illegal use of expropriated property. Sherritt would be liable in U.S. courts for the entire fair market value of the property. Since Canada does not recognize the HBA, U.S. courts would have to fulfill its judgements by freezing Sherritt's assets in the U.S.⁹⁸ In response, Sherritt could bring a counter claim in Canadian courts during the American trial to recover attorney's fees, court costs, and extra judicial expenses incurred during the litigation.⁹⁹ If a U.S. judgement has already been rendered, Sherritt could sue Freeport for the full amount won in U.S. courts.¹⁰⁰ Since the U.S. does not recognize FEMA,¹⁰¹ then Canada would have to freeze Freeport's assets in Canada to satisfy its judgement.¹⁰² The trick is if neither Sherritt nor Freeport has assets in the United States or Canada respectively, the legislative merry-go-round comes to a standstill. FEMA guarantees that a legal war will ensue upon implementation of Title III. This "tit for tat" process could cost both parties involved millions of dollars in attorney's fees and severely deteriorate U.S.-Canada relations. Most importantly, the legal and legislative maneuvering will ineluctably shift the focus away from facilitating a democratic transition in Cuba and placing an end to the island's human

⁹⁷ Interview with Douglass Foresight, Department of Foreign Affairs, Can., stated "under investigation" (May 5, 1999).

⁹⁸ If the Sherritt has no assets in the U.S. then, Freeport would have to ask a Canadian court to enforce the judgement. FEMA makes this illegal. See FEMA, ch. F-29 § 2.

⁹⁹ See FEMA, ch. F-29 § 9(1).

¹⁰⁰ *Id.*

¹⁰¹ See 22 U.S.C.A. § 6083(a)3.

In determining the amount or ownership of a claim in an action under this title, the court shall not accept as conclusive evidence any finding, orders, judgments, or decrees from administrative agencies or courts of foreign countries or international organizations that declare the value of or invalidate the claim, unless the declaration of value or invalidation was found pursuant to binding international arbitration to which the United States or the claimant submitted the claim.

¹⁰² If Freeport has no assets in Canada then, traditionally, the Sherritt would have to ask an American court to enforce the judgement. The HBA makes this illegal.

rights abuses—the ultimate goal shared by both Canada and the United States.

FEMA's second strategy of defiance prohibits Canadians from complying with the HBA.¹⁰³ If a corporation terminates an existing investment deal or extinguishes business relations in adherence to the HBA, then it could be liable in Canadian courts. In the case of a corporation, the fine cannot exceed 1,500,000 dollars.¹⁰⁴ In the case of an individual, the maximum sentence is 150,000 dollars or imprisonment for a term not exceeding five years, or both.¹⁰⁵ Canadian businessmen are faced with the choice of either obeying Canadian law and suffering American sanctions or vice versa.¹⁰⁶ FEMA's increased fines create an incentive for Canadians to abide by their own laws.¹⁰⁷ However, this incentive fails due to two significant faults with the legislation. First, the true reasons a corporation chooses not to do business in Cuba are not fully ascertainable. A corporation could cite a series of reasons for terminating a deal in Cuba, even if their true motive was to circumvent the possible financial ramifications imposed by the HBA.

For example, Redpath Sugar (Canadian Co.) terminated its deal to buy 100,000 pounds of raw sugar from Cuba.¹⁰⁸ It claimed that the deal would not reap adequate profits and that

¹⁰³ See FEMA, ch. F-29 § 5(1).

Where, in the opinion of the Attorney General of Canada, a foreign state or foreign tribunal has taken or is proposing or is likely to take measures affecting international trade or commerce of a kind or in a manner that has adversely affected or is likely to adversely affect significant Canadian interest in relation to international trade of commerce involving business carried on in whole or in part in Canada or that otherwise has infringed or is likely to infringe Canadian sovereignty, the Attorney General of Canada may, with the concurrence of the Minister of Foreign Affairs, by order, (b) prohibit any person in Canada from complying with such measure, or with any directive, instruction intimations of policy or other communications relating to such measures from a person who is in a position to direct or influence the policies of the person in Canada.

¹⁰⁴ See FEMA, ch. F-29 § 7.

¹⁰⁵ *Id.*

¹⁰⁶ In order to bring a claim in American courts the disputed property must be worth 50,000 dollars or more and the plaintiff can sue for the entire market value of the expropriated property, there is no ceiling on recovery. In contrast, the punitive ceiling of FEMA is 1,500,000 dollars.

¹⁰⁷ Previously the maximums were 10,000 dollars or five years in prison for individuals and corporations.

¹⁰⁸ See *Cuba: Canadian Company Penalized Under the Helms-Burton*, THE CARIBBEAN UPDATE, Aug. 1, 1996, available at 1996 WL 8154457.

a sugar deal elsewhere would be more lucrative.¹⁰⁹ In actuality, the potentially ruinous bout of legal confrontation involved in a HBA violation may have been Redpath's true reason for opting out of Cuba, but it would be extremely difficult for the Canadian government to prove this.¹¹⁰ The National Post printed a story about Michael Weingarten whose corporation, Commercial Consolidators, assembles and distributes high-end electronic products in Cuba.¹¹¹ He claims that Canadian banks have illegally denied his loan applications because they are intimidated by potential HBA sanctions; consequently he is forced to pay a 28% interest rate available through private lenders.¹¹² Jeff Keay, the Royal Bank's senior manager of corporate media stated, "We don't have any specific provisions against lending in Cuba and like any other loan, we assess things on their merits."¹¹³ Whether he is telling the truth or not, the bank merely had to issue a statement of neutrality, and cite other reasons for denying the loan in order to circumvent FEMA's punitive measures. In sum, FEMA's second strategy does not adequately prevent Canadian companies from complying with the HBA.

FEMA also fails to address the chilling effect unleashed by the HBA. While it is difficult to ascertain which corporations ended existing business deals in compliance with the HBA, it is virtually impossible to determine and quantify the number of business people deterred from engaging in future business with the island to begin with. For instance, an average Canadian investor may not take a risk on a hotel investment located in Cuba because the potential legal and financial risks imposed by the HBA make it a more volatile stock option.¹¹⁴ FEMA addresses this dilemma by attempting to create a chilling effect of

¹⁰⁹ *Id.*

¹¹⁰ Interview with Douglass Foresight, Department of Foreign Affairs, Can., stated "under investigation" (May 5, 1999).

¹¹¹ See Peter Morton, *Stymied by U.S. Bogeyman: Fear of U.S. Reaction has Kept Banks from Lending to Commercial Consolidators for its Cuban Operation*, NATIONAL POST, Mar. 10, 2000, available at 2000 WL 16225290.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ "Sherritt Power's 81-page prospectus includes seven pages of risk factors to warn investors about issues associated with the U.S. embargo against Cuba and the Helms-Burton law." See Greg Crone, *Sherritt Power Sparks Life into Cuba*, THE FIN. POST, Mar. 25, 1998, at 21.

its own— the fines levied on Canadian individuals and corporations for compliance with the HBA. However, since it is fairly simple for Canadian corporations to cite other reasons besides the HBA for not investing in Cuba, FEMA's chilling effect is undermined. In contrast, there is no "easy out" of the HBA. If a Canadian individual or corporation traffics in expropriated American property, their crime is easily ascertainable. When given a choice to either obey the American or Canadian law, Canadians have an incentive to take the "easy out" of the Canadian law and protect themselves from the potentially devastating blow of the HBA. FEMA strives to counter the HBA and its extraterritorial reach, but it is only partially successful. The irreconcilable chilling effect is the ultimate triumph of the HBA.

The HBA may have won a battle, but it certainly has not won the war. Canada has not stopped its relentless campaign to block the HBA's enforcement. Canadian activists organized a boycott focused on debilitating the engine behind the HBA— Cuban exiles in Florida. In protest, a coalition of Canadian church, labor and relief groups urged Canadian tourists to boycott Florida.¹¹⁵ About two million Canadians travel to Florida each winter, spending some US\$1.3 billion.¹¹⁶ Unfortunately, the boycott was unorganized, under publicized, and thus unsuccessful.

The HBA also spurned a second piece of legislation, the Godfrey-Milliken Bill.¹¹⁷ This is a parody of the HBA, which sanctions Americans for illegally trafficking in the expropriated property of British Loyalists seized during the American Revolution.¹¹⁸ John Godfrey, co-author of the bill, claims his ancestors fled from Virginia in loyalty to the King and now he would like to reclaim his family lands. Godfrey believes:

[a]s many as 100,000 people skipped north to what would become Canada rather than defy the Crown. He estimated that perhaps 3 million Canadians today are descendants of Loyalists from Britain's American colo-

¹¹⁵ See Howard Schneider, *Canada Spawns a Helms-Burton Spoof; Lawmakers Seek Restitution for Those Whose Kin Fled U.S. Revolution*, WASH. POST, July 25, 1996, at A24.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

nies. Like those who fled Cuba in the wake of Castro's revolution, their families simply had political differences with those who stayed on to fight.¹¹⁹

Surprisingly, the bill went quite far in the Canadian legislature before it died. The logic of the bill is convincing although its likelihood for success was tenuous at best. Canadian lawmakers were attacking the basis of the HBA and the economic embargo by claiming that compensation was never received for properties expropriated during the American Revolution; consequently, it is unfair for Americans to hold third parties liable for trafficking in properties expropriated during the Cuban revolution. The bill essentially mocks America for not abiding by the standards it sets for others.

Marc Thiessen, spokesman for the Foreign Relations Committee, responded by suggesting that the Godfrey-Milliken Bill was misdirected because the subject matter concerns Canada-Britain issues since the British 1783 Treaty of Paris guaranteed reparations to families that remained loyal to the Crown.¹²⁰ If Mr. Godfrey and his family have not received reparations for their ancestors' lands on Carter's Grove or if Milliken's claims to New York's Mohawk Valley have not been vindicated, then Thiessen says that this is a problem best solved by the British Parliament and not the American legislature.¹²¹

In the midst of the political flurry caused by the HBA, Canada made an effort to promote democracy and mitigate human rights abuses in Cuba. In 1997, Canadian Foreign Minister Lloyd Axworthy announced a fourteenth-point agreement with a two-fold purpose.¹²² First, the agreement proposes to help Cuba ameliorate its human rights abuses by first initiating a dialogue amongst officials, experts and professionals within Cuba, offering joint seminars located in both Canada and Cuba, as well as creating academic exchanges.¹²³ Second, cooperation on drug trafficking, international terrorism and the provision of food and medical aid were also negotiated in the 14-point

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² See Farah, *supra* note 86.

¹²³ *Id.*

agreement.¹²⁴ Instead of alienating the Castro government, Canada has pledged to strengthen ties between the two nations supporting the principle that dialogue is more beneficial than confrontation.¹²⁵

The purpose of Axworthy's most recent visit to Cuba on January 7, 1999 was to review Canada-Cuba progress on the 14-point agreement signed in 1997 and further build upon its foundation.¹²⁶ Consequently, two additional agreements were signed which focused on combating drug traffickers and another regarding prisoner exchanges that would allow Cuban and Canadian inmates to complete their sentences in their respective countries.¹²⁷ The 14-point agreement reflects a strategy of bilateral cooperation designed to move Cuba closer to democracy. However, this strategy has not been perfect.

On March 16, 1999 Cuba sentenced four political dissidents to exorbitant jail sentences and this caused Canada to curtail negotiations with the island, postpone bilateral development projects, and reevaluate its support for Cuba's return into the OAS.¹²⁸ Canada hopes that this strong message of disapproval encourages the Cuban government to allow freedom of information and speech, which are integral components of a vibrant democracy.

In the Canadian case, the benefits of employing antidote legislation do not outweigh the burdens. The Canadian example reaffirms the fact that unilateral strategies of countering U.S. hegemony are on the whole ineffective. Canada cannot afford to use FEMA because it may jeopardize its robust trading relationship with the United States. In essence, Canada countered a U.S. bluff (HBA) with a bluff of its own (FEMA). Instead of taking the situation into its own hands, Canada should have presented its case before a multilateral dispute resolution body like the one found in NAFTA. A collective problem-solving venue of this nature has the potential to use collectively agreed upon rules and norms to temper U.S. power. In a failure to do

¹²⁴ *Id.*

¹²⁵ See Associated Press, *I Talked Rights with Fidel: Grit*, THE EDMONTON SUN, Jan. 8, 1999, at 32.

¹²⁶ *Id.*

¹²⁷ See Associated Press, *Axworthy Raises Rights on Cuba Visit*, THE GLOBE AND MAIL, Jan. 8, 1999, at A14.

¹²⁸ See *Canada Reviews Relations with Cuba, Sends Message of Disapproval*, AGENCE FRANCE-PRESSE, Apr. 9, 1999, available at 1999 WL 2580382.

this, Canadian antidote law has reproduced the very same vices it initially sought to remedy.

C. Mexico

On October 23, 1996 the Mexican government created legislation in response to the HBA called the Law to Protect Trade and Investment from Foreign Norms that Contravene International Law, more commonly known as *Ley Antídoto* or Antidote Law.¹²⁹ Mexico's four major political parties –Institutional Revolutionary Party (PRI), The Labor Party (PT), the National Action Party (PAN), and the Party of Democratic Revolution (PRD)– unanimously agreed that the HBA was an infringement of Mexico's national sovereignty.¹³⁰ Senator Mauricio Fernandez Garza of PAN articulated the legislature's motive for passing *Ley Antídoto* when he stated that the HBA presented a "second opportunity for Mexico to defend its sovereignty in the ongoing U.S. Cuba conflict"¹³¹ (the CDA was the first). *Ley Antídoto* represents something more than just a reaction to the HBA, for several Mexican legislators it was an opportunity to challenge the untempered use of U.S. power as manifested through this law. Victor Quintanta Silveyra, Deputy of Mexico's ruling party PRI stated, "[w]e cannot be hostages of an ethnocentric and discriminatory ideology where the United States has the only 'interests' in the world and no friends or partners."¹³² Instead of creating a multilateral agreement designed to bring about democracy in Cuba, the U.S. is using its political and economic power to impose its foreign policy upon its allies. Regardless of whether it is compatible with international law, the HBA has negatively impacted U.S. relations with Mexico as well as with its other allies.

Prior to pursuing legislative remedies, the Mexican government attempted to resolve the HBA controversy through diplomatic means. In August of 1996 President Clinton's envoy to

¹²⁹ See *Ley de Protección al Comercio y la Inversión de Normas Extranjeras que Contravengan el Derecho Internacional*, D.O., 24 de Octubre de 1996 (Mex.), translated in *Mexico: Act To Protect Trade and Investment from Foreign Norms That Contravene International Law*, 36 I.L.M. 133 (1997).

¹³⁰ See Therese Margolis, *Cuban Official Sure of Mexico's Support*, WORLD SOURCES ONLINE, INC. (Mexico City), Sept. 4, 1996.

¹³¹ See 36 I.L.M. 133, *supra* note 129.

¹³² See, Margolis, *supra* note 130.

Cuba, Stewart Eizenstat, met with both Mexico's Secretary of Foreign Affairs, Gurria and the Secretary of Commerce and Industrial Development, Luis Tellez.¹³³ Mexico's Secretary of Commerce and Foreign Affairs presented Eizenstat with a special document that amongst other things recommended the immediate repeal of the HBA.¹³⁴ The document claimed that the HBA contravened international law by imposing coercive measures on other sovereign states, which are not endorsed by the United Nations. The Mexican government vowed that it would pursue all available legal means to challenge the validity of the HBA's extraterritorial reach.¹³⁵ The next diplomatic attempt to quell the HBA controversy occurred one year later.¹³⁶ Spurred by a Title IV action initiated against Mexico's largest investor in Cuba, Grupos Domos, the Mexican government wrote a diplomatic note in protest.¹³⁷ The letter stated that the Title IV action, "erodes the political dialogue between the two governments and provides a framework not conducive to the conversations that the Clinton administration wishes to conduct in Mexico."¹³⁸ Both of the aforementioned diplomatic protests were unsuccessful, and thus Ley Antídoto seemed to be Mexico's final recourse.

In September of 1996 President Ernesto Zedillo Ponce de León sent the bill to Mexico's Chamber of Senators.¹³⁹ On October 23, 1996 the Law to Protect Trade and Investment from Foreign Norms that Contravene International Law or Ley Antídoto was enacted.¹⁴⁰ Ley Antídoto has four major objectives. It prohibits internal compliance with the HBA, provides a 'clawback provision' to counteract U.S. judgements, delegates administration of the act to the executive branch,¹⁴¹ and delineates penalties for Mexican corporations and individuals

¹³³ *Id.*

¹³⁴ 36 I.L.M., *supra* note 129, at 135.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Batta, Invariable, la Posición de Rechazo Hacia la Helms, *cited in* Ley De Protección al Comercio y la Inversion De Nomas Extranjeras que Contravengan el Derecho Internacional, 36 I.L.M., *supra* note 129, at 135.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Secretariat of Foreign Relations and the Secretariat of Commerce and Industrial Development.

that do not comply with the law.¹⁴² First, the antidote law forbids its nationals from complying with provisions of the HBA. In article 1, the law specifically admonishes Mexican citizens not to, "engage in acts that affect trade or investment when said acts are the consequence of extraterritorial effects of foreign laws."¹⁴³ In other words, Mexican citizens are not to comply with the HBA or any legislation similar to it.¹⁴⁴ The foreign law referred to falls under the ambit of Ley Antídoto if its objective is to (1) "impose an economic blockade or limit investment in a country in order to provoke change in its form of government"; (2) "allow individual claims derived from expropriations made in the country to which the blockade is applied"; and (3) deny visas to those in violation of the said foreign law.¹⁴⁵ Mexico's antidote law also prohibits individuals and businesses from providing incriminating information to foreign tribunals.¹⁴⁶ As a means of gathering crucial information, the legislature imposes a duty to inform both the Secretary of Foreign Relations and the Secretary of Commerce and Industrial Promotion in instances when a foreign summons or notification is received or when the said foreign law adversely impacts business investments or activity.¹⁴⁷

Second, the Mexican antidote law mitigates the potentially devastating financial effects resulting from Title III actions by giving its national courts the power to nullify U.S. judgements, and arbitral awards.¹⁴⁸ Also, plaintiffs sued in U.S. courts are allowed to bring a counter suit in Mexico's federal court to recover court expenses and damages.¹⁴⁹ More significantly, if a counter suit is brought in Canada or the EU, article 5 allows "Mexican tribunals [to] recognize foreign judgements for the

¹⁴² 36 I.L.M. 133, *supra* note 129.

¹⁴³ *Id.*

¹⁴⁴ Although these provisions are clearly designed to address the HBA, a direct reference to the law is never made. This is one of the conundrums presented by the bill. If legislature were trying to make Ley Antídoto flexible enough to address any future extraterritorial laws implemented by the US, they may have failed because its language is much too specific to apply to future legislation. In addition, by not directly mentioning the HBA it is not specific enough.

¹⁴⁵ 36 I.L.M. *supra* note 129, at art. 1.

¹⁴⁶ *Id.* art. 2.

¹⁴⁷ *Id.* art. 3.

¹⁴⁸ *Id.* art. 4.

¹⁴⁹ *Id.* art. 5.

recovery of damages." In effect, judgements won in the EU and Canada can be enforced through Mexican courts. This provision establishes the united front necessary to block U.S. judgements, which ultimately mitigates the effectiveness of Title III. Unfortunately, neither Canada nor the EU included an analogous provision to guard Mexican interests. The effectiveness of a potential counter suit in Mexican courts is still contingent upon the location of assets because if a U.S. corporation has no assets in Mexico, then the Mexican counter suit has no means of enforcement.¹⁵⁰ This enforcement dilemma exists when American courts attempt to secure damages from Mexican corporations as well. Ultimately, Ley Antídoto adopts a tit for tat strategy that unfortunately creates a whirlwind of confusion, litigation, and chaos while adversely impacting Mexican-US relations. The Mexican government would argue that the HBA gave them no other choice.

Third, articles 7 and 8 delegate responsibilities to the Secretary of Foreign Relations and the Secretary of Commerce and Industrial Development. These departments are to advise individuals and corporations located in Mexican territory about their rights and protections under Mexican law. This provision of Ley Antídoto distinguishes it from the laws passed by both the European Union and Canada. Incorporated within the Mexican antidote law is a provision for systematically giving corporations and individuals the advice and guidance necessary to navigate through the complicated morass of laws and potential litigation created by the Helms-Burton controversy.¹⁵¹

Fourth, the final and most interesting section of the Mexican antidote law addresses the issue of damages. For committing acts that adversely affect commerce and investments as enumerated in article 1, the penalty is 100,000 days of the minimum daily salary.¹⁵² This is equivalent to approximately 332,500 US dollars.¹⁵³ In violation of article 2 (provision of information to foreign tribunals) the fine amounts to 50,000 days of the minimum daily salary or approximately 166,250 US dol-

¹⁵⁰ The EU explicitly recognizes judgments won in any of its member states, but not in Mexico and Canada.

¹⁵¹ The secretariats must take the guidelines established in Ley Antídoto and issue specific rules to administer the law.

¹⁵² 36 I.L.M. *supra* note 129, at art. 9.

¹⁵³ Minimum daily salary was 28.60 Mexican pesos as of Jan. 1997. And approximately 8 pesos = \$US1.

lars. Least severely, 1,000 days of the minimum daily salary are exacted for a violation of article 3 (duty to inform the government about investments prejudiced by said laws or the receipt of foreign judicial notices or summons), which is equivalent to approximately 3,325 dollars. If the perpetrator is a repeat offender, then the penalty is double the maximum limit of the corresponding sanction. The Secretary of External Relations is designated as the final decision-maker in regard to fines imposed.

Mexican fines do not provide the strong economic incentive necessary for companies to obey Mexican law rather than U.S. law. For example, under U.S. law, a Mexican corporation that traffics in expropriated property is liable for the full market value of the property plus interest and possibly treble damages as well.¹⁵⁴ This could very easily amount to millions of dollars. But under Mexican law, punitive damages for the most severe offense is only 332,500 dollars.

Similar to the problems encountered in FEMA, it is difficult for the Mexican government to determine the real reasons for disinvestment, to determine what level of disinvestment places a Mexican corporation in violation of article 1, and to counter the chilling effect on future investment. In addition, Mexico has exhibited a reluctance to enforce its own law. During an annual board meeting of Mexico's Banco Nacional de Comercio Exterior, the bank openly disregarded the purpose of Ley Antídoto and assisted companies to comply with the HBA. "At the press conference called to highlight the bank's achievements over the past year, bank officials underlined the help they had given Mexican exporters so that they could continue to trade with Cuba without risk of falling foul of the Helms-Burton law."¹⁵⁵ Bank officials should have been advising exporters about how to stay within the parameters of Mexican law. If government institutions are abiding by the HBA, what more can the Mexican government expect from its business community? Lack of enforcement coupled with the fact that American fines are potentially more crippling gives Mexican companies an incentive to abide by U.S. and not Mexican law. Mexico's direct goal of countering the HBA has proven ineffective, however its indirect

¹⁵⁴ Treble damages are three times the original amount of damages.

¹⁵⁵ See *Resistance Grows to Helms-Burton Law: Eizenstat Rebuffed in Mexico; Rio Group Prepares Broadside*, WEEKLY REPORT, September 12, 1996.

goals have been more successful. As a secondary goal, Mexico sought to assert its sovereignty and challenge U.S. hegemony by implementing antidote legislation. While the legislation passed has several problems and inconsistencies, the spirit and inherent message are intact.

The fact that Mexico is not enforcing Ley Antídoto suggests that the government created it merely to serve as an alternative diplomatic tool used when initial diplomatic relations failed. One positive aspect about antidote legislation created in response to the HBA is that it seemingly protects a country's interest more rapidly than if Mexico, Canada, or Cuba brought their case before a multilateral dispute resolution entity. However, Cuba's political and economic powerlessness has made its legislation merely symbolic, while Canada and Mexico's antidote legislation paves the way for a complicated onslaught of litigation that even its creators are not willing to invoke. In addition, the tit for tat strategy that is at the heart of Mexico and Canada's antidote legislation reflects a failure to take the high ground because the legislation responds to a U.S. unilateral threat with a threat with a bluff of its own. Multilateral trading bodies present a promising alternative to antidote legislation. Mexico and Canada should work within a collective problem-solving framework and invoke collective rules to temper U.S. power such as those found in NAFTA and the WTO. The following section evaluates the trade dispute mechanism of NAFTA.

D. NAFTA

If domestic antidote legislation is deemed insufficient, then Canada and Mexico can pursue a remedy through NAFTA. Article 2004 of the NAFTA charter states, "dispute settlement procedures shall apply in any case involving a disputed interpretation of NAFTA or in any case involving a measure that one state considers to be inconsistent with NAFTA."¹⁵⁶ Canada and Mexico can argue that the HBA is inconsistent with articles 1105, 1110, and Annex 1603. Article 1105 states that "each party shall accord to investments of investors of another Party treatment in accordance with international law, including fair

¹⁵⁶ See Walker, *supra* note 4, at 1.

and equitable treatment and full protection and security."¹⁵⁷ Mexico and Canada can challenge the HBA's consistency with international law; consequently, the opinion of the Juridical Committee declaring it contrary to customary international law becomes essential.

Article 1110 states that, "compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (date of expropriation)."¹⁵⁸ There are two features of the HBA's assessment of damages that possibly violate this provision. First, the language of the HBA requires a party found guilty of trafficking in expropriated property to pay one hundred percent of the worth of the expropriated property regardless if only fifteen percent was used. Second, the HBA gives U.S. courts the option to impose treble damages, which can amount up to three times the actual market value of the property. NAFTA only allows for the fair market value immediately before the expropriation took place.¹⁵⁹

Annex 1603 requires NAFTA members to allow temporary entrance to business persons from other NAFTA countries so long as "there is compliance with existing immigration measures applicable to temporary entry."¹⁶⁰ Title IV of the HBA revokes the visas of principle shareholders and their families when the State Department finds that they are participating in the "trafficking of expropriated properties."¹⁶¹ The HBA was enacted after the NAFTA treaty was signed, and thus does not qualify for the exemption relating to existing immigration measures.¹⁶²

The Free Trade Commission, established by Chapter 20, is the primary entity handling NAFTA based trade disputes arising between Mexico, Canada and the U.S.¹⁶³ The U.S. can cir-

¹⁵⁷ NAFTA art. 1105 (Minimum Standard of Treatment) available at 1992 WL 812394.

¹⁵⁸ NAFTA art. 1110 (Expropriation and Compensation), available at 1992 WL 812394.

¹⁵⁹ *Id.*

¹⁶⁰ See Iglesias, *supra* note 5, at 116.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Before a case goes to the Free Trade Commission, parties involved may request consultations which are somewhat similar to settlement hearings under American law. Consultations present involved parties with a forum to

cumvent the dispute resolution process by evoking article 2102,¹⁶⁴ which is the national security exemption that excuses noncompliance when a country is presented with an eminent military threat.¹⁶⁵ With the fall of the Soviet Union in 1991, Cuba can no longer be classified as a national security threat warranting an article 2002 exception.

Although a NAFTA challenge is available to both Canada and Mexico neither country has brought an official challenge. Canada and Mexico began the NAFTA trade dispute process by requesting consultations with the U.S. on March 20, 1996.¹⁶⁶ These talks were unsuccessful and thus legally the Free Trade Commission could have intervened any time after August 2, 1996. However, neither Canada nor Mexico has yet to make a formal request.¹⁶⁷ Mexican officials stated that the situation is still under advisement while Canada has other unascertainable reasons for not pursuing the challenge. "Thomas d'Aquino, chairman of the powerful Business Council on National Issues lobby group, said September 13 that his group had succeeded in its efforts to urge International Trade Minister Eggleton to postpone the challenge because launching it now would only generate an anti-NAFTA backlash in the United States."¹⁶⁸ This indicates that Canada and Mexico's objections to the HBA were not profound enough to jeopardize their lucrative trading partnership with the U.S., and thus both countries are relying on their antidote legislation to protect their respective interests if Title III should ever come into effect.

discuss their dispute prior to arbitration. If this informal mechanism produces no results, then at least 30 days after consultations are initiated the commission has the authority to negotiate a resolution under the authority of Article 2007. If the Commission fails to produce an agreement, then the arbitral panel has the power to make a final verdict, which the parties are required to abide by. Or if there is no agreement reached by the Commission "the complaining party may suspend the application of benefits under the agreement such that an equivalent effect results. That suspension may continue until a resolution concerning the dispute is reached." NAFTA treaty available at 1992 WL 812394.

¹⁶⁴ See NAFTA Treaty, 13 I.L.M. 476 (1992).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at Chapter 20.

¹⁶⁷ The NAFTA commission is comprised of 3 NAFTA trade ministers. See 13 I.L.M. 1093.

¹⁶⁸ See *Canada Introduces Legislation to Counter Helms-Burton Law*, 6 N. AMERICAN FREE TRADE AND INVESTMENT REP. 17 (1996).

It is plausible that Canada and Mexico are using their potential NAFTA challenge as a bargaining device just as the U.S. is using Title III as its bargaining device. The countries may be hoping that with a possible NAFTA challenge hanging over their heads, the U.S. will be less likely to enact Title III. In order to preserve a future challenge, neither Canada nor Mexico goes so far as to deny US citizens entrance to its borders in their antidote legislation because the NAFTA treaty states that "new laws in any of the three countries which hinder the free flow of goods, qualified people, and investments across the three signatories' borders would be in breach of the treaty in most circumstances."¹⁶⁹ Whatever the reason may be, the option to evoke a NAFTA dispute panel has not been exercised.

Using NAFTA dispute settlement provisions as opposed to antidote legislation would have given Canada a certain level of moral clout. They would have chosen a less confrontational approach, employed a collective problem-solving framework, and improved their chances of success. However, there are also several downsides to using multilateral trade organizations. First, the United States may stop supporting multilateral trade organizations like NAFTA if used too aggressively. Second, as a result of asymmetrical power relations, less powerful countries may fear reprisals by the United States for bringing cases before these entities (as seen in the case of Canada and Mexico). Third, multilateral trade organizations may be too dependent on the United States to produce consistently equitable results. Fourth, administrative bureaucracy may prevent these organizations from providing fast and efficient relief. In sum, if the multilateral trade organizations are weak or highly dependent on the United States, then they are not a viable option.

E. European Union

The European Union has led the international community in repudiating the HBA. On March 15, 1995 the Vice-President of the Commission of the European Community, Sir Leon Brittan, wrote a diplomatic letter to the U.S. Secretary of State, Warren Christopher, protesting the extraterritorial reach of the

¹⁶⁹ *Id.*

HBA.¹⁷⁰ Brittan made the EU's position very clear when he stated that, "although the EU is fully supportive of a peaceful transition in Cuba, it cannot accept that the U.S. unilaterally determine and restrict EU economic and commercial relations with third countries."¹⁷¹ In the letter, the European Union conveyed their disapproval with several provisions of the HBA, namely the extraterritorial restriction on trade with Cuba, denial of visas to shareholders or principal agents of corporations dealing in expropriated properties, regulation of transactions of U.S. subsidiaries incorporated outside of the United States; prohibition of EU sugar, molasses, and syrup unless the EU ensures its raw materials are not imported from Cuba, and the reduction in payments to international institutions such as the IMF and the Russian Federation.¹⁷² After this diplomatic attempt to ameliorate the turmoil created by the Helms-Burton controversy, the EU was the first country to enact an antidote law.

On November 22, 1996 the European Union passed the Council Regulation Protecting against the Effects of the Extra-Territorial Application of Legislation Adopted by a Third Country (hereinafter EU law).¹⁷³ The stated purpose of the EU law is to protect its established legal order by "removing, neutralizing, blocking or otherwise countering the effects of the U.S. LIBERTAD Act of 1996 and related legislation insofar as it purports to regulate activities within the jurisdiction of Member States."¹⁷⁴ The preamble of the antidote law is derived from fundamental objectives of the EU such as abolishing restrictions on international trade and encouraging movement of capital between member states and third countries.¹⁷⁵ The HBA contravenes these goals by regulating economic activities of individuals and corporations under the jurisdiction of member states.¹⁷⁶ For discussion purposes, the EU law can be divided into 5 distinct

¹⁷⁰ *European Union: Demarches Protesting the Cuban Liberty and Democratic Solidarity (Libertad) Act*, 35 I.L.M. 397, 398 (1995).

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Protecting Against the Effects of the Extra-Territorial Application of Legislation Adopted by a Third Country, Council Regulation (EC) No. 2271/96*, 36 I.L.M. 125 (1997) [hereinafter EU Law].

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

sections. Provisions of the law are intended to prevent internal compliance, neutralize foreign judgements, "clawback" at the HBA, administer the law among the various nations, and encourage cooperation amongst member states.¹⁷⁷

First, the purpose of the act is to protect the commercial activities of member states from the extraterritorial reach of American laws such as the HBA.¹⁷⁸ In order to realize this goal, citizens of member states are required to disclose information when their economic interests are adversely impacted by the HBA, and under the authority of article 2 this is to be done within 30 days.¹⁷⁹ Gathering information about the effects of the HBA is plausibly one of the most important yet difficult tasks in combating it, so article 2 attempts to facilitate this process. However, coordination problems still exist. For example, a German hotel chain doing business in Cuba may not want to reveal information pertaining to HBA's effects on their investment because the corporation fears its rival hotel chain in Cuba, owned by a French corporation, will have access to this confidential information. In order to ensure that affected parties divulge the necessary information, the EU law guarantees the information will be covered by the obligation of professional secrecy, which is an EU provision that ensures absolute confidentiality.

Second, the EU law neutralizes U.S. judgements and prevents enforcement in member countries.¹⁸⁰ Therefore a U.S. lawsuit would be undermined if the European Corporation in question has no assets in the U.S.

Third, the European antidote law has a clawback provision. Damages and expenses accumulated in American courts are fully recoverable in the courts of any member state.¹⁸¹ Article 6 states: "[t]he recovery could take the form of seizure and sale of assets held by those persons, entities, and persons acting on their behalf or intermediaries within the Community, including shares held in a legal person incorporated within the Community."¹⁸² The fact that European plaintiffs can bring suit in any

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* art. 1.

¹⁷⁹ *Id.* art. 2.

¹⁸⁰ *Id.* art. 4.

¹⁸¹ *Id.* art. 6.

¹⁸² *Id.*

member country gives corporations and individuals within the EU a more comprehensive and effective umbrella of protection than provided in Canada or Mexico.¹⁸³ One of the central setbacks of both Mexican and Canadian antidote legislation is that the American Corporation, which won the settlement in U.S. courts, may not have assets in Mexico or Canada. Consequently, the clawback legislation becomes futile because there are no means of enforcing the Canadian and Mexican judgements.¹⁸⁴ In the EU, there are more countries in which a European plaintiff can bring suit.¹⁸⁵ For example, if an American Company wins a judgement against an Italian Corporation, the Italian Corporation can bring a counter suit in Germany if this is where the American Company has significant assets.

Fourth, articles 7 and 8 deal with the logistical implementation. The EU law creates an implementation committee composed of representatives from various member states. article 7 describes the function of the governing committee and article 8 defines its proposed composition. As part of its administration, the EU law gives member states the power to determine the appropriate sanctions. Lastly, article 10 encourages the exchange of information in order to promote interstate cooperation in addressing the poignant challenges presented by the HBA

Immediately after the implementation of the European antidote law, the EU Council of Ministers issued a common position on Cuba. On December 2, 1996 the EU formally petitioned Cuba to liberalize its economy and improve their human rights record especially with regards to political freedoms. The EU stated that: "[t]he objective of the European Union in its relations with Cuba is to encourage a process of transition to pluralist democracy and respect for human rights and fundamental freedoms, as well sustainable recovery and improvement in

¹⁸³ However, the extraterritorial reach produced by the law directly conflicts with standard EU norms. Essentially, the European antidote law abrogates the same international norms it aims to rectify in the HBA.

¹⁸⁴ The Mexican antidote legislation, *Ley Antídoto*, allows other countries to secure their judgements through Mexican courts.

¹⁸⁵ To date there are 15 members of the EU: Sweden, U.K., Finland, Denmark, Belgium, Luxembourg, Spain, Italy, Greece, France, Ireland, Austria, Germany, Portugal, and the Netherlands.

the living standards of Cuban people.”¹⁸⁶ While denouncing U.S. unilateral economic sanctions on Cuba, the EU’s common position promotes a multilateral problem-solving framework. The document enumerates certain activities designed to promote their goals in Cuba. Amongst these activities are intensifying the dialogue with Cuban authorities to bring about improved human rights and a democratic transition, seeking out opportunities to emphasize the importance of adhering to human rights instruments, evaluating Cuban progress in reducing human rights violations, encouraging reform of internal legislation in the area of Civil and Political Rights, committing to provide ad hoc humanitarian aid, and engaging in focused economic cooperation to create an open economy.¹⁸⁷ If Cuba improves their human rights record and makes progress toward a democratic transition, then the EU promises increased economic cooperation, result-oriented political dialogue, and future negotiation of a more cooperation agreements between the EU and Cuba.¹⁸⁸ The common position proposed that after six months the EU would evaluate Cuba’s progress, but thus far no formal evaluation has been publicized or widely distributed.

F. World Trade Organization (WTO)

The European Union considered putting an end to the extra-territorial reach of the HBA with the dispute resolution mechanism available through the World Trade Organization (hereinafter WTO). The WTO, created on January 1, 1995, is a by-product of GATT and the Uruguay Round negotiations. Unlike GATT, the WTO is a permanent institution with dispute resolution procedures. The European Union, with Mexico and Canada in strong support, led the charge to bring the Helms-Burton dispute before the five-member dispute resolution body. The EU claimed that the HBA violated six provisions found within the WTO especially those in the General Agreement in Trade and Services (GATS).

First, the EU claimed that the HBA violates the most favored nation treatment because European products are not granted

¹⁸⁶ See *European Union: Council of Ministers Common Position on Cuba*, December 2, 1996, available at 36 I.L.M. 125, 213 (1997).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

the same advantages, favors, privileges, or immunities given to other contracting GATS members.¹⁸⁹ Second, it violates the national treatment provision because it gives American goods and services priority.¹⁹⁰ Third, it violates the freedom of transit found in article V because goods coming from Cuba cannot pass through American ports.¹⁹¹ Fourth, "the EC claims that the Act violates the prohibition on quantitative restrictions on importation of any product of the territory of another contracting party as well as the requirement to apply any quantitative restrictions in a nondiscriminatory fashion."¹⁹² Fifth the EU claims that the HBA breaches fundamental objectives of GATS.¹⁹³

On November 27, 1996 the WTO agreed to grant the EU a hearing based on the aforementioned claims.¹⁹⁴ When faced with this imminent challenge, the United States first threatened to boycott the hearing and then threatened to circumvent the confrontation by using its national security exemption to undermine WTO jurisdiction. However, Cuba clearly presents no threat to the national security of the U.S., especially since the collapse of the Soviet Union and the termination of its military subsidies in 1991. Utilizing the national security exemption would have no other purpose than to obviate the WTO's authority. Most severely, the U.S. action would establish a precedent for other countries that wish to violate WTO's multilateral trade rules, and this could effectively subvert WTO's reason for existence.¹⁹⁵

In light of this potentially disastrous situation, the EU and U.S. formulated an initial agreement on April 11, 1997 that temporarily suspended the WTO case.¹⁹⁶ The settlement is described in the European Union-United States: Memorandum of Understanding Concerning the U.S. Helms-Burton Act and the

¹⁸⁹ Fidler, *supra* note 32, at 333.

¹⁹⁰ *Id.* at 312.

¹⁹¹ *Id.* at 310.

¹⁹² *Id.* at 313.

¹⁹³ *Id.* at 311.

¹⁹⁴ See 13 INTL. TRADE REP. 1824. See also *The White House: Office of the Press Secretary*, available at <http://www.pub.whitehouse.gov/urires/l2R?urn:-pdi://oma.eop.gov.us/1998/5/19/9.text.1> (last visited Apr. 16, 2000) (enumerates the parameters of the EU-U.S. agreement).

¹⁹⁵ See Robert Hillman, U.S., *EU Agree on Trade Sanction Laws*, THE DALLAS MORNING NEWS, May. 19, 1998, available at 1998 WL 13376595.

¹⁹⁶ Prior to the settlement, Canada and Mexico seriously considered joining the EU in the WTO complaint.

U.S. Iran and Libya Sanction Act. The United States promised to suspend enforcement of title IV and in exchange, the EU agreed to assist with the formulation of a global registry of properties expropriated in the Cuban revolution.¹⁹⁷ This database would be available over the internet and would clearly list properties and businesses off limits to multinational corporations.¹⁹⁸ Any European company desiring to establish business on expropriated properties would not receive any form of financial assistance from the EU.¹⁹⁹ In addition, the EU agreed "not to upgrade their political or economic relations with Cuba until or unless Cuba improved their human rights and democratic record."²⁰⁰ Subsequently, there was an agreement on the implementation of the Helms Burton Act signed by the United States and the European Communities in London on May 18, 1998.²⁰¹

Using a multilateral organization such as the WTO as a bargaining device to temper U.S. power is far more effective than creating antidote legislation. The EU case is a perfect example of this because it was the WTO challenge and not the threat of enacting its antidote legislation that produced the positive results. However, there are those who are not satisfied with the final result. Senator Jesse Helms criticized the agreement because it only prevents new investments from arising and does not address the businesses that are presently violating the HBA. Castro expressed his discontent with the U.S.-EU agreement, at the 50th anniversary of GATT while lambasting the United States embargo on Cuba. He stated, "the World Trade Organization should be capable of preventing 'economic genocide'."²⁰² The WTO's main purpose is to promote multilateral trading relationships, but the U.S. imposition of unilateral eco-

¹⁹⁷ Hillman, *supra* note 195.

¹⁹⁸ *Id.*

¹⁹⁹ See Peter Morton, *Pact Puts Canada on the Spot: Ottawa in the Middle as U.S. Clinches Deal with Europe on Economic Sanction*, THE FIN. POST, May 20, 1998 at 5.

²⁰⁰ Hillman, *supra* note 195.

²⁰¹ See Jeffrey Ulbrich, *Clinton, Europeans Reach Deal on Trade Easing Restrictions on Cuba, Iran, Libya Favored*, ASSOCIATED PRESS, available at 1998 WL 5092568.

²⁰² *Castro Dampens WTO Party: Cuban Leader Denounces Trade Liberalization for Hurting the Poor*, THE GLOBE AND MAIL, (Geneva Switzerland) May 20, 1998.

conomic sanctions is inconsistent with this goal. Castro believes that the HBA controversy is exactly the type of trading dispute that the WTO should have the power to resolve. Although the case never formally went before the WTO, the threat of invoking this procedure moved the United States to action. Unlike the threat of enacting antidote legislation, the prospect of a WTO challenge was substantive, and the collective problem-solving framework of the WTO gave the action legitimacy. The Helms-Burton example shows the utility of multilateral trade organizations in challenging U.S. hegemony.

V. CONCLUSION

The international community has unequivocally repudiated the HBA. The UN General Assembly denounced the HBA by passing repeated resolutions with an overwhelming majority;²⁰³ Leaders from forty-eight (48) Latin American, Caribbean, and European countries meet in Rio de Janeiro and signed a declaration that amongst other things condemned extraterritorial laws in clear reference to the HBA.²⁰⁴ In addition, the Association of Caribbean States and the Council of the Latin American Economic System have also expressed ardent objections to Titles 3 and 4 of the HBA.

President Clinton's periodic suspensions of Title III have held the looming threat of copious litigation at bay, but with his term nearing an end, what will be the fate of the HBA in 2001? If America's next president does not continue with the 6-month suspensions of Title III, then Clinton's bargaining tool could backfire. A morass of litigation will begin, a juridical war will commence, and political relations between the U.S. and Mexico, Canada, and the EU will be deleteriously affected. Despite these serious consequences, there is a lack of political will within Congress to reform or repeal the HBA.²⁰⁵ With such international opposition, why did Congress pass the HBA?

²⁰³ *Supra* note 33.

²⁰⁴ *European, Latin American Leaders Sign Cooperation Agreement*, AGENCE FRANCE-PRESSE, June 29, 1999, available at 1999 WL 2630059.

²⁰⁵ Although there has been a lack of political will to repeal the HBA, the Senate recently passed a bill that would soften the economic embargo in Cuba. The bill allows U.S. companies to export food and medicine to Cuba under a one year licensing scheme so long as the products are not subsidized by the U.S. government in any fashion. See S.B. 926 106th Cong. (1999).

One central premise of this work is that the United States never intended to implement the controversial Title III. Under the power of section 306, the President has suspended its implementation in six-month intervals creating the proverbial carrot-and-stick paradigm. U.S. admonishes its allies to stop investing and trading in expropriated properties and reaffirm their commitment to a democratic transition in Cuba. If the U.S. allies do not take heed to this warning, then they may be subject to the costly labyrinth of potential litigation resulting from a Title III action. Using the HBA as a bargaining device has produced mixed results. While the HBA has deterred investment in Cuba, perceptions of U.S. hegemony have been reinforced, which deleteriously affects its relations with key allies.

Canada, Cuba, Mexico, and the European Union retaliated by passing problematic and ineffective antidote legislation. The Cuban government passed Law Number 80 in an effort to shelter its interest in the barrage of political and economic confusion unleashed by the HBA. This law institutes protective measures for foreign investors, punishes Cubans who conform with the Act, and promises to sanction U.S. citizens and corporations that bring Title III suits in future restitution proceedings. However, Law Number 80 has been relegated to the fringes of the international debate concerning the HBA because of the stark power asymmetries between Cuba and the United States. The value of the Cuban government's act is purely symbolic because the country does not have the power to launch a political or legislative protest against U.S. hegemony as manifested in the HBA. Ultimately, provisions in Cuba's antidote law only lead the way to further repression of Civil and Political Rights.

Legislation passed by Canada, Mexico, and the EU attempts to protect its nationals from Title III's potential consequences and discourage compliance with the HBA using a two-prong strategy: first by granting their nationals the right to counter sue in domestic courts; and second by imposing financial sanctions on individuals and corporations that elect to comply with the HBA over domestic laws. However, retaliatory laws passed in response to the HBA fail to challenge U.S. hegemony in three respects. First, they don't counter the acute chilling effect on future business people who want to invest in Cuba but are

deterred by potentially costly HBA sanctions. Second, companies have a financial incentive to comply with the HBA due to insufficient domestic financial sanctions. Third, domestic enforcement of antidote legislation is virtually impossible because it's tremendously difficult for governments to ascertain if the HBA caused a business to divest or if the cause was other financial reasons.

Beyond these fact-specific deficiencies, the tit-for-tat strategy employed in the retaliatory legislation inherently ignores the fact that their effectiveness is predicated upon pre-existing power dynamics. For example, Mexico alone cannot stand against U.S. hegemony, but within a multilateral dispute resolution mechanism, countries like Mexico have hope. This assertion is proven by the fact there is a unique reluctance by the Mexican government to even enforce its antidote law. In contrast, the EU brought the HBA controversy before the WTO and was able to broker a diplomatic compromise.

Due its political, economic and military might, the United States imposed unilaterally its Cuban agenda upon allies. The HBA example teaches us that international antidote legislation alone cannot protect foreign countries from the application of U.S. law domestically. Regional and trade coalitions have the power to counter U.S. hegemony.²⁰⁶ A clear and direct message resulted from the international uproar—the U.S. must work in collaboration with its allies using multilateral strategies in order to achieve its foreign policy objectives. If the U.S. continues to eschew multilateral efforts in its policy towards Cuba, then U.S. power will come under fire.

²⁰⁶ The author is not sure why Cuba has not challenged the HBA through the WTO; this seems to be a viable strategy. Perhaps another researcher can answer this conundrum.